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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Telecommunications)
Act of 1996:)
)
Telecommunications Carriers' Use of)
Customer Proprietary Network Information)
and Other Customer Information)

CC Docket No. 96-115

To: The Commission

PETITION FOR RECONSIDERATION

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to 47 C.F.R. § 1.429, hereby petitions the Federal Communications Commission ("Commission") to reconsider certain aspects of the *Second Report and Order* in the above-captioned docket.¹ In support of this Petition, the following is respectfully shown:

I. INTRODUCTION

PageNet, through its subsidiaries, is the largest messaging carrier in the United States serving over 10 million units. In its implementation of Section 222 of the Act, the Commission has inadvertently, but significantly, restricted PageNet's ability to utilize information related to its customers to either: (i) retain customers responding to the competitive offering of other carriers; or (ii) offer new and related products and services. Because CMRS carriers utilize customer information to enhance competition without a detrimental impact on a customer's

¹ *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-115, 63 FR 20326 (April 24, 1998) ("CPNI Order").

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privacy, CMRS carriers should be able to offer products and services to customers unencumbered by unnecessary and burdensome CPNI restrictions, CPNI in a manner which would remove the CPE, information services, and telecommunication services distinctions. As such, the Commission should reconsider its CPNI rules to allow CMRS carriers to use CPNI to win back customers and to market any CPE, information or telecommunications services.

II. CMRS CARRIERS SHOULD BE ABLE TO USE CPNI TO RETAIN OR WIN BACK CUSTOMERS

In the *CPNI Order*, the Commission adopted Section 64.2005(b)(3) which states that

A telecommunications carrier may not use, disclose or permit access to a former customer's CPNI to regain the business of the customer who has switched to another service provider.

47 C.F.R. § 64.2005(b)(3). The Commission should reconsider Section 64.2005(b)(3) as adopted because the rule: (i) oversteps Section 222 of the Act, (ii) has no impact on the customer's privacy, (iii) restricts competition, (iv) denies customers of the significant benefits of two or more carriers vying for an opportunity to provide service to the customer, and (v) completely discounts the existing relationship between the carrier and customer.

The Section 64.2005(b)(3) prohibition against using CPNI to win back customers does not square with the language of Section 222. Simply put, there is no statutory prohibition against the use of CPNI by a carrier to win-back a former customer. Moreover, the privacy goals of Section 222 are not achieved by the Section 64.2005(b)(3) prohibition against the use of CPNI to win back customers because the carrier and the customer are already known to each other through an existing or prior business relationship. If a customer notifies that carrier that it wishes to switch service to another carrier, privacy does not dictate that the first carrier not use its CPNI to determine if a competitive offering may be made to retain or win back the customer.

The Commission should also reconsider Section 64.2005(b)(3) in the CMRS context because it adversely impacts competition. As the Commission is fully aware, the CMRS marketplace is probably the most competitive of all of the telecommunications markets. It is therefore important that the Commission not introduce regulation that restricts competition in the CMRS marketplace, as Section 64.2005(b)(3) does. Equally important is that the Commission understands that a one-size-fits-all approach to CPNI regulation, such as applying the same rules to monopoly-grown local exchange companies and competitively-grown wireless companies, is not appropriate. As such, the fact that it may take many weeks for landline carriers to effectuate the transfer of a customer to a competitive carrier, which arguably does not advance competition in that market because of the lack of competition, does not mandate that the win back prohibition is necessary or beneficial in competitive markets such as the CMRS market.

The reason the Section 64.2005(b)(3) prohibition adversely impacts competition is that the first carrier is effectively foreclosed from soliciting the former customer. In a competitive market, a carrier that has lost a customer, because the customer wishes a different service or will be charged less for a similar service, may seek to match or surpass the second carrier's offering in order to retain the customer. In order to stay in business, carriers must understand why they lose customers to competitors. If they are losing customers because they are not competitive with new service offerings or pricing, the carrier will take remedial action. This is simply a carrier meeting the challenge of competition through modification of services and pricing. Competition mandates that the former carrier be able to review the customer's CPNI to determine whether it may match or surpass the service or pricing of the other carrier. There is absolutely no compelling reason, and no Section 222 mandate, that would require the application

of Section 64.2005(b)(3) to CMRS carriers, particularly paging carriers who undisputedly have the most competitive market of all. Public interest, in fact, dictates an opposite result.

Ultimately, Section 64.2005(b)(3) is highly detrimental to the CMRS customer. If the carrier receives a termination notice or loses a customer because of a particular service offering or pricing of the new carrier, the former carrier must have a better offer for the customer or it can have no expectation of winning the customer back. If the first carrier is prohibited from making such an offering through the use of the CPNI, it is the customer that may lose out on the better deal. Section 222 of the Act clearly does not prohibit a subscriber from using two or more carriers to competitively bid for services and pricing. Section 64.2005(b)(3), at least as it applies to CMRS carriers, must be reconsidered because its operation will prevent the subscriber from achieving the best deal from the carriers.

Finally, Section 64.2005(b)(3) should be reconsidered because it unfairly places the first carrier in the same position as a carrier that has never provided service to the customer. The acquisition and retention of customers is expensive and difficult. It is not fair to the existing carrier, who has expended resources to obtain and retain the customer to this point, not to be able to use its CPNI to retain the benefit of its efforts. This is particularly so when carriers must respond to promotions and short-term marketing programs advanced by their competitors as those programs are advanced. It is not fair to preclude a carrier from retaining or winning back a customer when the first carrier is willing to match or surpass that offer simply because another carrier has attracted a customer through a promotion or other marketing device.

III. WIRELESS SERVICES, CPE AND INFORMATIONAL SERVICES SHOULD BE TREATED THE SAME FOR CPNI PURPOSES

The Commission must reconsider Section 64.2005(b)(1) as it applies to CMRS carriers. Specifically, Section 64.2005(b)(1) restricts a carrier's ability to use CPNI to market CPE and

information services. These restrictions are detrimental to the customer and the competitive CMRS marketplace.

It should be emphasized that PageNet has reviewed the Commission's May 21, 1998 *Clarification Order*² and is encouraged that the Commission is attempting to allow carriers some room to use CPNI for marketing of bundled CPE and information services. However, the *Clarification Order* is difficult to understand because it attempts to distinguish permissible uses of CPNI based upon the current language of the CPNI rules. As such, although the clarification is helpful, the Commission must reconsider the full application of the CPNI rules to CMRS carriers.³

In the context of wireless -- telecommunications services, CPE, and information services are in the same "bucket" or "total service" classification and the Commission should treat them as such. In many CMRS offerings, for example, there are equal and integrated elements of telecommunications service, CPE and information services. As an example, a paging customer receives messages through a paging unit that will likely be rented or purchased from the carrier and may also receive voice mail services that are linked to the paging service. This is telecommunications service that is integrated with CPE and integrated with an enhanced or information service. If the carrier ceased offering one element of the service, the customer may not want the other two elements of the service, and in many cases, the remaining services would not be functional.

² Order in CC Docket No. 96-115, DA 98-971, released on May 21, 1998 ("*Clarification Order*").

³ The Commission may deem it appropriate to forbear from the application of the CNPI rule to CMRS carriers because of the substantial service and competitive benefits of unrestricted use of CPNI by CMRS carriers.

The question for PageNet and other CMRS carriers is whether a CMRS carrier that developed an entirely different CMRS service offering (either telecommunications service, CPE or information service or any combination thereof) is prevented from marketing the new offering through CPNI. The answer is unclear under the current language of the rule and the *Clarification Order*. Because it is unclear, it is necessary for the Commission to reconsider how it will apply Section 64.2005(b)(1) to CMRS carriers or reconsider the language of the rule as currently drafted.

There can be no question that the greatest surprises in unique and innovative services that will be offered over CMRS networks are yet to come. As written, and arguably as interpreted by the *Clarification Order*, the CPNI rules restrict the ability of a carrier to identify likely customers for new services and CPE. This is detrimental to the customer because he or she may be unaware of such new and desirable offerings and, in addition, is contrary to the competitive model under which the CMRS marketplace now operates. The solution, however, is simple. Because wireless telecommunications services, CPE, and information or enhanced services are all integral parts of the total services offered to CMRS customers, CMRS carriers should be able to use CPNI to market wireless telecommunications services, CPE, or information services, either as a bundled offerings or separately.

IV. THE CPNI RULES PLACE A HEAVY ADMINISTRATIVE BURDEN ON CMRS CARRIERS

The Commission must reconsider the CPNI rules as they are applied to CMRS carriers in light of the burden that the rules will place on CMRS carriers. As noted above, CMRS carriers integrate wireless telecommunications services, CPE and information services. Under the CPNI rules, CMRS carriers will be required to determine whether each and every contact with a customer violates such rules with respect to each of these service elements. Because there are

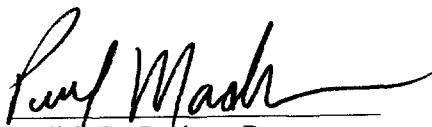
significant penalties for non-compliance, some carriers may choose to strictly limit marketing to non-customers or have other extremely limited marketing programs that do not rely on CPNI for their existing customers rather than run afoul of the CPNI rules. This would severely limit competition in the CMRS marketplace and rob carriers of their significant investment in developing a customer base to which new products and services may be sold.

WHEREFORE, for all of the foregoing reasons, PageNet respectfully requests that the Commission reconsider the CPNI rules in accordance with this Petition.

Respectfully submitted,

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